

[Waiver 1996-4]

March 12, 1996

TO: Martha Rosacker, Substance Abuse Prevention Coordinator
Department of Health and Human Services

FROM: Laurie Horvitz, Chair [initialed]
Montgomery County Ethics Commission

RE: Request for Advisory Opinion and/or Waiver

You have requested advice and, if necessary, a waiver of the Ethics Law regarding a public employee under your supervision who wishes to accept a position with a County contractor. The employee would resign from public service in order to accept this private position. The employee has been responsible for a County program addressing the community's need for substance abuse prevention. The program was created by the County with federal grant funds and has evolved into an independent non-profit corporation. When the organization became an independent entity, the County began contracting with the organization to receive services that had been performed previously by the County. The organization now seeks to hire the County employee as its executive director. The affected County department supports this proposed employment because the employee would be able to serve an important community function. Although the organization receives significant funding from the County, the corporation also receives funding from other sources.

The employee must obtain a waiver because he seeks to work for a corporation that was created with his direct participation during his County employment and because the non-profit organization currently contracts with his agency. Section 19A-13 of the Montgomery County Ethics Law provides, in part:

- (a) A former public employee must not accept employment or assist any party, other than a County agency, in a case, contract, or other specific matter for 10 years after the last date the employee significantly participated in the matter as a public employee.
- (b) For one year after the effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangement (express, implied, or tacit) with any person or business that contracts with a County agency if the public employee:
 - (1) significantly participated in regulating the person or business; or
 - (2) had official responsibility concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility).

The prohibitions of this section may be waived, however, in the event that one of the following criteria is established:

- (1) the waiver is needed to ensure that competent services to the County are timely and available;
- (2) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
- (3) the proposed employment is not likely to create an actual conflict of interest.

Section 19A-8(b) of the Montgomery County Ethics Law.

Based upon the written information provided, and the additional explanation that you and your employee provided at the February meeting of the Ethics Commission, the Commission finds that it may grant the waiver based upon two grounds. First, the Commission finds that the waiver is needed to ensure that competent services to the County are timely and available. You indicated that the continued viability of the independent organization is dependent upon the skillful leadership of its staff and Board. The expertise of the public employee would vastly improve the organization's chances of survival and success. Because this program is so important to the County and to the community, you advocated a waiver. The Commission finds this argument persuasive.

Second, the Commission finds that there is little or no likelihood of an actual conflict resulting from this employment. The organization will not be completely supported by County funds and the County will not be overseeing the day-to-day operations of the organization. To minimize the likelihood of any conflict, however, the Commission is imposing a condition upon the public employee's participation in certain matters. He must not participate in the organization's requests for funding from the County for one year following his departure from County employment. This does not preclude his participation in fundraising contacts with non-County groups and individuals.

Therefore, the Commission grants a waiver based upon Section 19A-8(b)(1) and (b)(3). If you have any questions concerning this decision, please do not hesitate to contact the Ethics Commission.

cc: Barbara McNally, Executive Secretary, Montgomery County Ethics Commission